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# Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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# Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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# Chapter I
# Introduction

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 62/69 and met at United Nations Headquarters from 27 to 29 February, from 3 to 5 March and on 7 March 2008.

2. In accordance with paragraph 5 of General Assembly resolution 50/52, the Special Committee was open to all States Members of the United Nations.

3. The Special Committee held two meetings, the 253rd, on 27 February, and the 254th, on 7 March. The Working Group of the Whole, established at the 253rd meeting, held six meetings: on 27 February (1st meeting); on 28 February (2nd meeting); on 29 February (3rd meeting); on 3 March (4th meeting); on 4 March (5th meeting); and on 7 March (6th meeting). Informal consultations were also held on 27, 28 and 29 February and on 3 and 4 March 2008.

4. On behalf of the Secretary-General, the session was opened by Nicolas Michel, the Under-Secretary-General for Legal Affairs and Legal Counsel.

5. At its 253rd meeting, on 27 February, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981[1] and taking into account the results of the pre-session informal consultations among Member States, held on 6 February, elected the following members of its Bureau:

*Chairperson*:
Karim Medrek (Morocco)

*Vice-Chairpersons*:
Gustavo Álvarez (Uruguay)
Thomas Fitschen (Germany)
Monika Popenkova (Czech Republic)

*Rapporteur*:
Phuchphop Mongkolnavin (Thailand)

6. The Bureau of the Special Committee also served as the Bureau of the Working Group of the Whole.

7. The Director of the Codification Division of the Office of Legal Affairs acted as Secretary of the Special Committee. The Principal Legal Officer of the Division acted as Deputy Secretary of the Special Committee and Secretary of the Working Group of the Whole. The Codification Division provided the substantive services for the Special Committee and the Working Group.

8. Also at its 253rd meeting, the Special Committee adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.

[1] See *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33* (A/36/33), para. 7.

5. Consideration of the questions referred to in General Assembly resolution 62/69, in accordance with the mandate of the Special Committee as set out in that resolution.

6. Adoption of the report.

9. General statements touching on all or several items were made at the 253rd meeting, as well as, in some instances, prior to the consideration of each of the specific items in the Working Group. The substance of those general statements is reflected in the relevant sections of the present report.

10. With regard to the question of the maintenance of international peace and security, the Special Committee had before it a working paper submitted by the Russian Federation during the sixty-second session of the General Assembly entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations";[2] all of the related reports of the Secretary-General,[3] including the most recent one, entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions",[4] and the 1998 report on the matter containing a summary of the deliberations and main findings of the ad hoc expert group meeting convened pursuant to paragraph 4 of General Assembly resolution 52/162;[5] and a revised working paper submitted by the Libyan Arab Jamahiriya at the 2002 session on the strengthening of certain principles concerning the impact and application of sanctions.[6]

11. Also with regard to the question of the maintenance of international peace and security, the Special Committee had before it a working paper submitted by the Russian Federation at its 1998 session entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations";[7] a proposal submitted by Cuba at the 1997 session entitled

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[2] A/C.6/62/L.6. The Russian Federation submitted in 1998 a working paper entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation" (*Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33), para. 45) and a revised version thereof in 2000 (A/55/33, para. 52). During the Committee's 2002 session, an addendum entitled "List of proposals and amendments to the Russian working paper entitled 'Basic conditions and standard criteria for the introduction of sanctions and other coercive measures and their implementation' introduced during the first reading of the paper" was submitted (A/57/33, para. 54), and further revised versions of the working paper were introduced at the 2003 session (A/58/33, para. 39) and at the 2004 session (A/59/33, para. 32). Also at the 2004 session, as a result of informal consultations, the Russian Federation submitted a further revised working paper to be considered at the Committee's 2005 session (ibid., para. 70). At the 2007 session, the Russian Federation submitted a further revised version of its working paper entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations" (A/62/33, para. 23).

[3] A/48/573-S/26705, A/49/356, A/50/60-S/1995/1, A/50/361, A/50/423, A/51/317, A/52/308, A/53/312, A/54/383 and Add.1, A/55/295 and Add.1, A/56/303, A/57/165 and Add.1, A/58/346, A/59/334, A/60/320 and A/61/304.

[4] A/62/206 and Corr.1.

[5] A/53/312.

[6] A/57/33, para. 89. The working paper constituted a revision of the proposal submitted by the Libyan Arab Jamahiriya during the Committee's 2001 session (A/56/33, para. 116).

[7] A/53/33, para. 73. At the 1997 session of the Committee, the Russian Federation submitted an informal working paper entitled "Some views on the importance of and urgent need for the elaboration of a draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts" (A/52/33 and Corr.1, para. 58).

"Strengthening of the role of the Organization and enhancing its effectiveness"[8] and an addendum thereto submitted at the 1998 session;[9] a revised proposal also submitted at the 1998 session by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security;[10] and a revised working paper submitted by Belarus and the Russian Federation at the 2005 session containing a revised version of a draft General Assembly resolution.[11] At the 253rd meeting of the Special Committee, on 27 February 2008, the Dominican Republic introduced a new proposal on behalf of the Rio Group entitled "Consideration of the legal aspects of the reform of the United Nations".[12]

12. At its 254th meeting, on 7 March 2008, the Special Committee adopted its report on its 2008 session.

[8] A/52/33 and Corr.1, para. 59.

[9] A/53/33, para. 84.

[10] Ibid., para. 98.

[11] See A/60/33, para. 56. During the Committee's 1999 session, Belarus and the Russian Federation submitted a working paper containing a draft General Assembly resolution in which it was recommended that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence. At the same session, following discussions, the sponsors submitted a revised version of the draft resolution for future consideration (A/54/33, paras. 89-101). A further revised version was submitted at the 2001 session (A/56/33, para. 178).

[12] See paragraph 56 below.

# Chapter II
## Recommendations and decisions of the Special Committee

13. The Special Committee submits to the General Assembly:

(a) With regard to the question of the maintenance of international peace and security, in particular the strengthening of the role of the Organization and enhancing its effectiveness, the recommendations in paragraphs 21, 33, 44 and 63 below, as well as the recommendation in paragraph 38 of its 2006 report[13] and paragraph 13 of its 2007 report;[14]

(b) With regard to the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, the recommendation in paragraph 51 below.

[13] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 33* (A/61/33).
[14] Ibid., *Supplement No. 33* (A/62/33).

# Chapter III
## Maintenance of international peace and security

### A. Consideration of the revised working paper submitted by the Russian Federation entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations"

14. The revised working paper submitted by the Russian Federation, entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations", contained in document A/C.6/62/L.6, was referred to in the general exchange of views held at the 253rd meeting of the Special Committee, on 27 February 2008. It was also discussed at the 1st meeting of the Working Group of the Whole, on the same day.

15. The sponsor delegation emphasized that the text, as further revised, reflected comments and suggestions made by the delegations as well as recent developments in the application of collective measures under Chapter VII of the Charter of the United Nations. The new text received broad support in both the Sixth and the Special Committees, and the Special Committee could recommend annexing it to a resolution of the General Assembly. With regard to the contents of the revised working paper, the new text was aimed at enhancing the effectiveness of sanctions, which remained an important tool of the maintenance of international peace and security, by providing practical recommendations. The sponsor delegation highlighted the following issues: Sanctions should be imposed by the Security Council in accordance with its powers under Chapter VII of the Charter only after the exhaustion of all peaceful means of settlement and should be balanced; they should provide for clear objectives, conditions and time frame for introducing and lifting them and be subjected to periodic review; being aimed at modifying the behaviour of the target State, they should be based on the assessment of their possible adverse impact on third States or civilian populations so as to minimize or avoid such an impact and should not lead to any retribution or human rights violations. The sponsor delegation invited other delegations to present concrete suggestions regarding the revised working paper and announced its intention to conduct informal consultations on the revised working paper.

16. At the 253rd meeting, some delegations expressed views similar to the above-mentioned views of the sponsor delegation and emphasized that in order to be effective sanctions should be introduced and applied in conformity with the provisions of the Charter and international law, and in accordance with objective and strict criteria. It was stated that sanctions should not be aimed at changing political regimes and that their introduction should be based on reliable information. They should not be applied "preventively" in instances of mere violation of international law, norms or standards. It was suggested that the International Law Commission should consider the issue of the legal consequences of the imposition of unlawful sanctions. Concern was expressed over the imposition of unilateral sanctions in violation of the Charter. The need to improve sanctions regimes was also emphasized. A point was made that the role of the General Assembly and the Economic and Social Council should be strengthened in relation to sanctions. It was reiterated that targeted sanctions constituted a better option for minimizing negative effects on civilian populations. Reference was made, in this context, to the 2005

World Summit Outcome. Some delegations reiterated their support for the revised working paper and pointed out that the Special Committee was now in a position to finalize its consideration at the current session and to recommend it to the General Assembly for adoption.

17. Others expressed the view that the concerns that had motivated inter alia the working paper had been taken up and addressed effectively by the Security Council, especially regarding the application of targeted sanctions, and that the Special Committee should avoid duplication with the work of other bodies of the Organization addressing these issues. A view was also reiterated that the Committee should not aim to devise norms concerning the design and implementation of sanctions and should not pursue activities in this area that would be inconsistent with the roles of the principal organs of the United Nations as set forth in the Charter, in particular Article 24. Some delegations pointed out that the Committee had exhausted deliberations on this issue and that it should conclude its work on the issue as a matter of urgency.

18. At the 5th meeting of the Working Group, on 4 March 2008, the representative of the Russian Federation orally reported to the Working Group on the results of the informal consultations held on the text of the revised working paper and thanked the delegations for their concrete suggestions and constructive discussions, which had resulted in significant progress in the work on the proposal. He also indicated the intention of the sponsor delegation to take into account to the maximum degree in the further revision of the proposal the views expressed and suggestions made by the delegations.

19. The delegations expressed their appreciation for the efforts of the sponsor delegation aimed at facilitating the exchange of views on various complex issues raised in the proposal and noted with satisfaction the progress achieved in the work on the revised working paper. General support was expressed for the continuation of the consideration of the proposal at the next session of the Special Committee. A view was expressed in favour of the earliest conclusion of the discussion on the proposal.

20. The text of the revised proposal, as it emerged from informal consultations, submitted by the Russian delegation for inclusion in the 2008 report of the Special Committee, is reproduced as an annex to the present report.

21. At its 254th meeting, on 7 March 2008, the Special Committee adopted the following recommendation:

> "At its 254th meeting, the Special Committee decided to continue to consider, on a priority basis, a working document submitted by the Russian Federation entitled 'Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations' (see annex to the present report) with a view to focusing on the outstanding issues."

## B. Implementation of the provisions of the Charter relating to assistance to third States affected by sanctions[15]

22. The Special Committee considered the question of the implementation of the provisions of the Charter relating to assistance to third States affected by sanctions during the general exchange of views held at the 253rd meeting, on 27 February 2008, as well as during the 1st and 2nd meetings of the Working Group of the Whole, on 27 and 28 February 2008.

23. At its 2nd meeting, the Working Group was briefed by representatives of the Department of Political Affairs and the Department of Economic and Social Affairs on developments relating to paragraph 13 of the Secretary-General's report on this question (A/62/206 and Corr.1), on modalities, technical procedures and guidelines on coordination of technical assistance available to third States affected by the implementation of sanctions, as requested by the General Assembly in its resolution 62/69, paragraph 14. Following the briefings, the representatives of the Secretariat answered questions raised by delegations. The statements were circulated.

24. During the discussion, some delegations stressed the importance of the Special Committee addressing the question on a priority basis. They reaffirmed that sanctions, applied in accordance with the Charter of the United Nations, constituted an important tool in the maintenance and restoration of international peace and security and should be designed with care in order to minimize any adverse impact they might have on civilian populations and third States. The continued recourse by the Security Council to targeted sanctions, which preserve the effectiveness of sanctions while minimizing their unintended consequences, was particularly welcomed in this regard. Delegations also emphasized that sanctions should be implemented and monitored effectively, in accordance with specific terms and goals, subsequent to an objective assessment of the unintended consequences they could generate.

25. Several delegations welcomed the final report of the informal Working Group of the Security Council on general issues of sanctions, which contained a useful list of best practices and methods which would contribute to making sanctions better targeted and more effective. Regret was however expressed that the report did not contain any recommendation that explicitly referred to ways and means to assist third States with the unintended consequences of sanctions. Support was expressed for the idea of establishing a working group to study the matter.

26. Delegations took note of the report of the Secretary-General on this question and recognized that the targeted nature of recently imposed sanctions was having the effect of minimizing unintended consequences for civilian populations and third States. They commended the progress made by the Security Council in this field, including the establishment of new procedures for the listing and de-listing of individuals and entities on sanctions lists and the adoption of a focal point. In view of the fact that none of the sanctions committees had been approached by Member States concerning special economic problems arising from the implementation of sanctions since 2003, several delegations stated that the Committee should acknowledge these positive developments occurring in other forums, avoid duplication of work and conclude its consideration on this topic. The usefulness of

[15] General comments on sanctions are also covered in section A of this chapter.

actively considering the establishment of a fund financed from assessed contributions or other United Nations-based financial arrangements to minimize the losses incurred as a consequence of the application of sanctions was also questioned. It was noted that such costs should be considered through appropriate mechanisms, such as the international financial institutions. Some other delegations nevertheless observed that the Security Council retained its prerogative of using comprehensive sanctions under the Charter. In their view, even targeted sanctions could entail unintended negative effects for third States and, therefore, the Special Committee should remain seized of the matter with the aim of establishing a comprehensive and objective framework which would allow for broad-based adaptation of sanctions and mitigate their adverse effects on third States and civilian populations.

27. Some delegations called for the establishment of a mechanism to assist third States at the time of the introduction of sanctions which was not dependent on a specific request from such States. It was also noted that Article 50 provided a mechanism to discuss the effect of sanctions, but did not require the Security Council to take any specific action in this regard.

28. It was suggested that any reform of the Charter of the United Nations should include a mandate for the Economic and Social Council to undertake studies relating to the socio-economic and humanitarian effects of sanctions, prior to their application.

## C. Revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions

29. At the 1st meeting of the Working Group of the Whole, on 27 February 2008, the Chairman drew attention to the revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110/Rev.1), contained in the 2002 report of the Special Committee.[16]

30. At the second meeting of the Working Group of the Whole, on 28 February 2008, the sponsor delegation observed that the legal aspects of the issue remained valid, and requested that the proposal be kept on the agenda of the Special Committee and be transmitted to the Sixth Committee for its eventual adoption by the General Assembly.

## D. Consideration of the working paper submitted by the Russian Federation entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations"

31. During the general exchange of views held at the 253rd meeting of the Special Committee, on 27 February 2008, some delegations welcomed the conclusion of

[16] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 33* (A/57/33), para. 89.

work by the Committee on the working paper entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations",[17] which the Russian Federation had submitted to the Special Committee at its 1998 session.

32. At the 2nd meeting of the Working Group of the Whole, on 28 February 2008, the sponsor delegation, the Russian Federation, referred to the working paper entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" and to paragraph 35 of the 2007 report of the Special Committee (A/62/33) containing a recommendation of the Committee inviting the Chair of the Sixth Committee to bring the sections of the reports of the Special Committee referring to peacekeeping operations to the attention of the Chairman of the Fourth Committee. The sponsor delegation pointed out that, although this issue was not directly addressed by General Assembly resolution 62/69, on the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, neither the Sixth Committee nor the Assembly had objected to that recommendation. The Working Group recommended that the topic be removed from the agenda of the Special Committee. Thus the consideration of this topic by the Special Committee was completed.

33. At its 254th meeting, on 7 March 2008, the Special Committee decided not to keep the above-mentioned topic on its agenda.

## E. Consideration of the working papers submitted by Cuba at the 1997 and 1998 sessions of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness"

34. The Special Committee considered the item entitled "Strengthening of the role of the Organization and enhancing its effectiveness" during the general exchange of views held at the 253rd meeting, on 27 February 2008, as well as during the 2nd meeting of the Working Group of the Whole, on 28 February. It referred, in this context, to the working papers submitted by Cuba at the 1997 and 1998 sessions of the Committee.[18]

35. The sponsor delegation reiterated the importance of strengthening and enhancing the role of the Organization in the area of the maintenance of international peace and security, and in particular the role of the General Assembly as the principal legislative, policymaking and representative organ. The sponsor delegation considered that its working papers continued to be valid, and requested that they remain on the agenda of the Special Committee and encouraged all States to make proposals and amendments to them in order to advance the discussion on the item.

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[17] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33), para. 73.

[18] A/AC.182/L.93 and Add.1; see *Official Records of the General Assembly, Fifty-second Session, Supplement No. 33* (A/52/33), para. 59, and ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 84.

36. Some delegations expressed support for the working papers and reaffirmed the importance of the work of the Special Committee in the area of enhancing the role of the General Assembly, with a view to ensuring that it could effectively and efficiently exercise the functions assigned to it under the Charter. It was also observed that democratizing the Security Council and ensuring transparency of its work was of the utmost importance to the effective functioning of the Organization.

## F. Consideration of the revised proposal submitted by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security

37. The revised proposal submitted by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security[19] was referred to in the general exchange of views, held on 27 February 2008, as well as at the 2nd meeting of the Working Group of the Whole, on 28 February 2008.

38. The sponsor delegation observed that following the adoption of the 2005 World Summit Outcome, the United Nations had begun the process of reform. The revised working paper submitted by the sponsor delegation was relevant to the reform of the Organization and the elements contained therein addressed the legal aspects of the reform and remained valid. It requested that the proposal remain on the agenda of the Special Committee and be transmitted to the Sixth Committee for its eventual adoption by the General Assembly.

## G. Consideration of the revised working paper submitted by Belarus and the Russian Federation

39. During the general exchange of views held at the 253rd meeting of the Special Committee, on 27 February 2008, the representative of Belarus, as co-sponsor of the proposal, referred to the revised working paper submitted by Belarus and the Russian Federation at the 2005 session of the Special Committee,[20] in which it was recommended, inter alia, that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence. The co-sponsor viewed the issue of the legal limits of the use of force as a key issue of international relations and pointed out that the recognition of the seriousness of the consequences of a non-uniform approach to the interpretation of the relevant provisions of the Charter of the United Nations should prevail over concerns regarding the significant workload of the International Court of Justice. The co-sponsor of the proposal invited delegations to present to the sponsors their suggestions aimed at improving the formulations of the

[19] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33), para. 98.

[20] See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 33* (A/60/33), para. 56.

proposal which could lead to the submission of the agreed text to the General Assembly.

40. Some delegations reiterated their support for the proposal which, in their view, would contribute to the strengthening of the principle of the non-use of force or the threat of force set out in the Charter. Concern was expressed over attempts to justify the unilateral use of force, without authorization by the Security Council, under the false pretext of self-defence, which was considered a violation of the Charter.

41. Some other delegations expressed their views against the consideration of the revised proposal. A point was made that the issue of the use of force was adequately and clearly addressed in the relevant provisions of the Charter and, consequently, the proposal that an advisory opinion be requested by the General Assembly from the International Court of Justice on this matter could not be supported. Some delegations stressed that the time had come to reconsider or discontinue further discussion on those issues which had been on the agenda of the Special Committee for many years without any immediate chance of reaching consensus.

42. At the 2nd meeting of the Working Group of the Whole, on 28 February 2008, the representative of Belarus pointed out that the proposal was aimed at strengthening the mechanisms for the maintenance of international peace and security envisaged by the Charter. The co-sponsor stressed that the Court could answer the following questions: (1) What are the legal consequences of the use of force for a State which had applied force without a decision of the Security Council? (2) Is a decision of the Security Council or of the General Assembly required for determining the existence of an act of aggression, in the context of the legal consequences of non-compliance with the provisions of the Charter regulating the use of force? (3) What are the legal consequences for the entire international community of the use of armed force by a State or a group of States in circumvention of the provisions of the Charter? The co-sponsor viewed the request of an advisory opinion from the International Court of Justice in the context of the responsibility of the Court, as a main judicial organ of the Organization, in the area of the strengthening of international justice. The co-sponsor also pointed out that the Court could play a more significant role within the system of international judicial institutions by contributing to their interaction and exchange of information on topical issues of international law. This would not only improve the quality of their decisions but would also minimize the consequences of the fragmentation and erosion of international law.

43. Some delegations reiterated their views against the consideration of the revised proposal. They did not view it as necessary and noted that its nature was too general. It was pointed out that, in the 2005 World Summit Outcome, it had been recognized that relevant provisions of the Charter are very clear and sufficient.

44. At its 254th meeting, the Special Committee decided to keep the proposal on its agenda.

# Chapter IV

## Peaceful settlement of disputes

45. The Special Committee considered the item entitled "Peaceful settlement of disputes" during the general exchange of views held at its 253rd meeting, on 27 February, as well as during the 3rd meeting of the Working Group of the Whole, on 29 February.

46. During the general exchange of views, delegations emphasized that peaceful settlement of disputes was a basic principle of international law enshrined in Article 2, paragraph 3, of the Charter. References were made to the 2005 World Summit Outcome, in which States were reminded of their obligation to settle international disputes by peaceful means, so that international peace and security and justice were not endangered. The importance of free choice of means in the settlement of disputes was underlined by the speakers. References were also made to the important role and record of the International Court of Justice in the judicial settlement of disputes.

# Chapter V

## *Repertory of Practice of United Nations Organs* and *Repertoire of the Practice of the Security Council*

47. During the general exchange of views held at the 253rd meeting of the Special Committee, on 27 February 2008, as well as during the 3rd meeting of the Working Group of the Whole, on 29 February, delegations commended the ongoing efforts undertaken by the Secretariat to reduce the backlog in the preparation of the *Repertory of Practice of United Nations Organs* and of the *Repertoire of the Practice of the Security Council*. In this regard, delegations welcomed the enhanced cooperation with academic institutions, as well as the progress made towards making both publications available on the Internet, including advance versions. Some delegations recalled the significance of the two publications as research tools for the international community, in particular for the diplomatic community and academia, and their importance in the preservation of the institutional memory of the Organization. Regret was expressed with regard to the financial situation and, in this context, some delegations called for additional voluntary contributions to the trust funds established for the preparation of the *Repertory* and the *Repertoire*.

48. At its 3rd meeting, the Working Group was briefed by the Secretariat on the status of the preparation of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*.

49. With regard to the *Repertory*, attention was drawn to the progress made with regard to the preparation of a number of studies, and it was pointed out that cooperation with academic institutions in the preparation of draft studies was continuing. It was emphasized that the Secretariat continued to have the ultimate responsibility for the preparation of the studies. It was further reported that the website of the *Repertory* continued to be updated regularly. It was recalled that the General Assembly, in its resolution 62/69, called upon States to make contributions to the trust fund for the elimination of the backlog in the *Repertory*, and appreciation was expressed to those States that had made contributions thus far.

50. With regard to the *Repertoire*, it was pointed out that the eleventh supplement had recently been published. It was also observed that the Secretariat continued to follow a two-track approach in the preparation of the *Repertoire*, and thus worked on the preparation of several supplements simultaneously. Attention was also drawn to the progress made with respect to the preparation of supplements 13, 14 and 15 and the fact that advance versions of several chapters of those supplements were accessible online. It was further pointed out that supplement 12 was being edited and that an advance version was available in its entirety on the Internet. In accordance with the efforts to make the entire publication available in the six official languages, it was reported that every single published volume of the *Repertoire* in French had been digitized and posted online. It was further noted that progress had been achieved thanks to contributions made by States to the trust fund, as well as the sponsoring of associate experts. An appeal was made for continued donations and sponsorships, and gratitude was expressed towards those States that had offered assistance thus far.

51. The Special Committee on the Charter of the United Nations recommends that the General Assembly:

(a) Commend the Secretary-General for the progress made in the preparation of studies of the *Repertory of Practice of United Nations Organs*, including the increased use of the internship programme of the United Nations and further expanded cooperation with academic institutions for this purpose, as well as the progress made towards updating the *Repertoire of the Practice of the Security Council*;

(b) Note with appreciation the contributions made by Member States to the trust fund for the updating of the *Repertoire*, as well as the trust fund for the elimination of the backlog in the *Repertory*;

(c) Reiterate its call for voluntary contributions to the trust fund for the updating of the *Repertoire of the Practice of the Security Council*, as well as the trust fund for the elimination of the backlog in the *Repertory of Practice of United Nations Organs*, and the sponsoring, on a voluntary basis, and with no cost to the United Nations, of associate experts to assist in the updating of the two publications;

(d) Call upon the Secretary-General to continue his efforts towards updating the two publications and making them available electronically in all their respective language versions;

(e) Reiterate the responsibility of the Secretary-General for the quality of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, in particular with regard to the *Repertoire of the Practice of the Security Council*, and call upon the Secretary-General to continue to follow the modalities outlined in paragraphs 102 to 106 of his report of 18 September 1952.[21]

[21] A/2170.

# Chapter VI
# Working methods of the Special Committee and identification of new subjects

## A. Working methods of the Special Committee

52. In the general exchange of views held at the 253rd meeting of the Special Committee, on 27 February 2008, as well as during the discussions of the Working Group of the Whole on 3 March 2008, some delegations recalled with satisfaction the adoption by the Committee of the working paper on the working methods of the Special Committee, as noted by the General Assembly in resolution 61/38.

53. Some delegations sought further improvements to the working methods of the Special Committee, in particular the full implementation of the new working methods adopted two years previously. It was also observed that some proposals on the agenda of the Committee were under consideration in other bodies of the United Nations and that some other proposals had been on the agenda of the Committee for several years, with no prospect of reaching a consensus in the near future. It was suggested that, for the sake of rationalization of the working methods of the Committee, all the proposals on its agenda should be re-examined with a view to discontinuing the consideration of proposals that did not meet the criteria established under the new working methods.

54. Some delegations reiterated that the current status of work in the Special Committee was mainly due to the lack of political will on the part of some Member States, and was not a result of the working methods. It was further observed that the quality of documents adopted by the Committee was more important than the length of time an item remained on the Committee's agenda.

55. Some delegations pointed out that no time limitations should be set for the submission of proposals, as they might contain important and interesting points. It was observed that, while the desire to improve the working methods of the Special Committee was a commendable objective, the working methods should continue to comply with the rules of procedure of the General Assembly, including the presentation of documents. In this regard reference was made to General Assembly resolution 60/286 on the revitalization of the General Assembly.

## B. Identification of new subjects

56. At the 253rd plenary meeting of the Special Committee, on 27 February 2008, the representative of the Dominican Republic, on behalf of the Rio Group, introduced a proposal entitled "Consideration of the legal aspects of the reform of the United Nations", contained in document A/AC.182/L.126, dated 14 February 2008. The text of the proposal reads:

## Consideration of the legal aspects of the reform of the United Nations

**Proposal submitted by the Rio Group**

1. Reform processes of international organizations generally involve or entail a review of their legal aspects in the interests of preserving the essence and structure of the constitutional or founding instrument, and of achieving results in keeping with international law. In line with that premise, and also considering the Organization's relevance in an evolving world, United Nations reforms, other than in exceptional cases, cannot be exempt from appropriate legal review that sheds light on their conformity with the Charter of the United Nations and the international rule of law. This is all the more true when there is a need to repeal or replace Charter provisions, or to set out one or more additional rules.

2. However, the United Nations has not established an organ or body of legal experts with adequate State representation (i.e., of a genuinely multilateral nature) to deal with legal aspects arising from the reform processes initiated within the institution, leaving this critical area unaddressed, which could lead to the convening of ad hoc legal committees in which States are not represented.

3. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, which was entrusted by the General Assembly, inter alia, with the task of examining suggestions and proposals of States regarding the Charter of the United Nations and the strengthening of the Organization, including proposals to enhance its ability to achieve its purposes,[a] could successfully perform the task of considering the legal aspects of the reforms already decided upon by the General Assembly, when specifically requested to do so, with a view to recommending adjustments to bring the Charter of the United Nations into line with these decisions.

4. The Special Committee, through General Assembly resolutions 61/38[b] and 62/69,[c] has expressed its readiness to consider, as appropriate, any proposal referred to it by the General Assembly in the implementation of any decision of the High-level Plenary Meeting of the sixtieth session of the General Assembly in September 2005 that concerns the Charter and any amendments thereto.

5. On the basis of the foregoing, the General Assembly would assign the item entitled "Consideration of the legal aspects of the reform of the United Nations" to the Special Committee. Under this item, the Committee, at the specific request of that principal organ, would undertake the appropriate technical and legal review of such matters as:

(a) Amendments or additions to the Charter of the United Nations that may be necessary to implement the reform decisions adopted by the General Assembly;

(b) Amendments or additions of other Charter provisions that are required as a consequence of the reform decisions adopted by the General Assembly.

6. It is clear that the Special Committee would take action under the assigned item only when it was explicitly requested to review the legal aspects of a reform. In no case would the Special Committee submit reform proposals or projects on the basis of the item.

7. Pursuant to the respective review, the Special Committee would submit a report of a purely advisory nature to the General Assembly, which would decide at its discretion how to proceed with respect to that document.

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[a] Resolution 3499 (XXX) of 15 December 1975, paragraph 1.
[b] Resolution 61/38 of 4 December 2006, paragraph 4 (d).
[c] Resolution 62/69 of 6 December 2007, paragraph 3 (e).

57. At the 3rd meeting of the Working Group of the Whole, on 29 February 2008, the representative of the Dominican Republic, speaking on behalf of the Rio Group, further elaborated on the proposal. He reiterated the appropriateness of consideration by a standing legal body where all Member States are represented, upon the request of the General Assembly, of the legal aspects and implications of United Nations reform decided upon by that main organ, including possible amendments to the Charter. He emphasized that the Committee would be empowered only to make recommendations to the General Assembly and that this authorization would be in full compliance with the Special Committee's mandate to strengthen the Organization, as it would protect the core legal instruments of the Organization and would offer an opportunity for the Committee to develop its procedures on how to deal with requests from the General Assembly.

58. During the discussions, some delegations supported the proposal and its consideration by the Special Committee. It was observed that the proposal was a timely, relevant and valuable new subject for the Committee to consider. Some delegations needed more time to consider it before expressing their views. Some speakers expressed their willingness to further discuss the proposal with a view to improving it and favoured its early adoption.

59. Some delegations expressed caution with regard to the inclusion of the new subject in the agenda of the Special Committee, on the grounds that the reform of the Organization was an ongoing process, and that the Committee should play only a supplementary role in this regard and solely upon the request of the General Assembly. It was further observed that it might be inappropriate to include a new subject in the agenda of the Committee before the conclusion of the consideration of the existing proposals on the agenda of the Committee.

60. Doubts were also expressed regarding the added value of the proposal in view of the fact that the General Assembly had empowered the Committee in its resolution 62/69 "to consider, as appropriate, any proposal referred to it by the General Assembly in the implementation of the decisions of the High-level Plenary Meeting of the sixtieth session of the Assembly in September 2005 that concern the Charter and any amendments thereto". It was observed that the ongoing process of United Nations reform, including its legal aspects, was an issue that continues to be considered in other relevant bodies of the Organization.

61. At the 5th meeting of the Working Group, on 4 March 2008, the representative of the Dominican Republic noted that, while the proposal had received broad

support from delegations, some delegations were not currently in a position to express their views on the subject.

62. At the same meeting, some delegations pointed out that they needed time to further consider the proposal. The view was also expressed that it was not desirable to discuss the question of amendments to the Charter in the context of the reform of the Organization, as presented in the proposal. It was therefore suggested that the proposal should be improved accordingly, and also address other concerns expressed by delegations during the current session.

63. At its 254th meeting, the Special Committee decided to keep the proposal on its agenda.

# Annex

## [Basic conditions and standard criteria [recommended] for the] introduction and implementation of sanctions imposed by the United Nations

## I. General issues

1. Sanctions remain an important tool under the Charter of the United Nations in efforts to maintain international peace and security without recourse to the use of [armed] force. Sanctions should be carefully targeted in support of clear [and legitimate] objectives and be implemented in ways that balance effectiveness to achieve the desired results against possible adverse consequences, including socio-economic and humanitarian consequences, for populations and third States.

2. [The application of sanctions should be resorted to when relevant peaceful options provided by the Charter are inadequate and only when the Security Council determines the existence of any threat to the peace, breach of the peace, or act of aggression.]

**Alternative 1**

[Sanctions are among the options to consider when the Security Council determines the existence of any threat to the peace, breach of the peace, or act of aggression.]

**Alternative 2**

[Sanctions should be imposed when the Security Council determines the existence of any threat to the peace, breach of the peace, or act of aggression and only as a last resort when all non-coercive measures are exhausted.]

[2bis. The imposition of sanctions must be legitimate. The reasons that necessitate such imposition must be identified and stated in advance, and for each respective reason appropriate sanction or sanctions may be imposed.]

3. Sanctions should be introduced in conformity with the provisions of the Charter, and they should be consistent with other applicable rules of international law [, having due regard to [all] human rights and fundamental freedoms].

4. Best practices and guidelines adopted by the Security Council and the General Assembly in the field of sanctions, in particular those contained in the 2005 World Summit Outcome, [General Assembly resolution 51/242] and Security Council resolution[s] 1730 (2006) [and 1732 (2006)] should be taken into account in the elaboration and implementation of sanctions regimes.

5. [Sanctions should be implemented and monitored effectively with clear benchmarks and should be periodically reviewed, as appropriate, and remain for as limited a period as necessary to achieve their objectives and should be terminated once the objectives have been achieved.]

**Alternative**

[Sanctions should be implemented and monitored effectively with clear benchmarks and should be periodically reviewed, as appropriate, and remain in place for as limited a period as possible to achieve their objectives. They should be lifted once their objectives have been achieved or the conditions for their lifting fulfilled.]

6. [Sanctions regimes with regard to individuals and entities should ensure that the decision to list such individuals and entities is based on fair and clear procedures and that regular reviews of names on the list are conducted; ensure, to the degree possible, maximum specificity in identifying individuals and entities to be targeted; and ensure also that fair and clear procedures for de-listing exist early in sanctions regimes. [Listed individuals and entities should be notified of the decision and of as much detail as possible of the [publicly releasable] Statement of Case.] [There should be an appropriate mechanism for handling individuals' or entities' requests for de-listing.]]

**Alternative**

[6. The Security Council and its relevant subsidiary bodies should ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them.

6bis. Sanctions regimes should ensure, to the degree possible, maximum specificity in identifying individuals and entities to be targeted.]

7. [Sanctions with regard to States and other parties [may not be open-ended and] [should either have an expiration date or] should be subject to periodic review with a view to lifting them or not, or to adjusting them, taking into account the humanitarian situation and depending on the fulfilment by the target State and other parties of the requirements of the Security Council.]

**Alternative**

[Sanctions with regard to States and other parties should be subject to periodic review with a view to the Security Council taking decisions to lift them or adjust them in appropriate cases, taking into account the humanitarian situation and the conduct of the target State or other parties affected by the sanctions.]

8. Before sanctions are applied, a clear warning [could] [should] [should, where appropriate,] be expressed in unequivocal language to the target State.

9. [The [key] purpose of sanctions is to restore international peace and security by modifying the behaviour of the target State, party, individual or entity and not to [overthrow legal authorities of the target State or] punish or otherwise exact retribution. Targeted sanctions are preferable in this regard.]

**Alternative**

[The purpose of sanctions is to modify the behaviour of a party that is threatening international peace and security and not to punish or otherwise exact retribution. Sanctions regimes should be commensurate with these objectives.]

## II. Unintended side effects of sanctions

[9bis. Sanctions should [reduce] [avoid] [reduce or avoid] to the [maximum] extent possible [any] adverse humanitarian effects or unintended consequences for individuals and entities not targeted or third States]. [Targeted sanctions, such as arms embargoes, travel bans and the freezing of funds are a way of achieving this.]]

[10. Objective assessment of the short-term and long-term socio-economic and humanitarian consequences of sanctions [is necessary] [may be useful] both at the stage of their preparation and in the course of their implementation and should be conducted by the Security Council and its sanctions committees with the assistance of the Secretariat. [As far as possible, a prior assessment of the consequences of sanctions for the target State and for third States should be made.] In this regard, the methodology for the assessment of the humanitarian implications of sanctions reflected in the *Sanctions Assessment Handbook* (2004) might be useful. [Means should be envisaged to minimize the particular suffering of the most vulnerable groups, keeping in mind emergency situations, such as mass refugee flows.]]

[11. All information on the humanitarian consequences of the introduction and implementation of sanctions, including those which have a bearing on the basic living conditions of the civilian population of the target State, on its socio-economic development and on third States which have suffered or may suffer as a result of their implementation should be considered by the Security Council and its sanctions committees, with a view to the modification of the sanctions regime where appropriate.]

[12. As far as possible, situations in which the consequences of the introduction of sanctions would inflict considerable material and financial harm on third States or in which the civilian population in the target State or third States would experience considerable adverse consequences should be avoided. Means should be envisaged to minimize the particular suffering of the most vulnerable groups, keeping in mind emergency situations, such as mass refugee flows.]

13. [Provisions on] humanitarian [and other] exemptions to all targeted measures, including arms embargoes, travel restrictions, aviation bans and financial sanctions, should be [standardized] [made available and considered on a case-by-case basis, as appropriate], in each sanctions regime.]

**Alternative**

[Humanitarian exemptions to all targeted measures, including arms embargoes, travel restrictions, aviation bans and financial sanctions, should be standardized. Humanitarian exemptions should be made available and considered on a case-by-case basis.]

14. [Sanctions regimes, as well as targeted States and parties, must ensure [, as necessary,] that appropriate conditions are created for allowing an adequate supply of humanitarian goods to reach the civilian population. Essential humanitarian goods should be considered for exemption by the relevant United Nations bodies, including the sanctions committees. In this regard, efforts should be made to allow target States to have access to appropriate resources and procedures for financing humanitarian imports.]

**Alternative**

**[Essential humanitarian goods should be considered for exemption by the Security Council.]**

**15. The principles of neutrality, independence, transparency, [and] impartiality [and the impermissibility of any form of discrimination] in the provision of humanitarian and medical assistance and other forms of humanitarian support for all sectors and groups of the civilian population should be observed. A condition of providing such assistance should be the prior clearly expressed consent of the recipient State or a request on its part as provided for in the guiding principles adopted by the General Assembly in its resolution 46/182.**

**16. In emergency situations and cases of force majeure (natural disasters, threat of famine, mass disturbances resulting in the disorganization of the country's Government), consideration should be given to the suspension of sanctions in order to prevent a humanitarian disaster. A decision on this must be taken in each specific case.**

**17. Decisions on sanctions should be in accordance with the purposes and principles set out in the Charter of the United Nations. [Sanctions regimes should be designed to avoid unintended consequences in the target State or third States which may lead to violations of human rights and fundamental freedoms.]**

# III. Implementation

**18. Sanctions [shall] [should] be implemented in good faith and [uniformly] [fully] by all [Member] States. Violations [must] [should] be brought to the attention of the general membership of the United Nations through the [appropriate channels] [Security Council and its relevant subsidiary bodies].**

**19. Monitoring and compliance are first and foremost the responsibility of individual Member States. Member States should endeavour to prevent or correct activities in violation of the sanctions measures within their jurisdiction. In this regard the provisions of the report of the Informal Working Group of the Security Council on General Issues of Sanctions (see S/2006/997) should be taken into account.**

**20. International monitoring by the Security Council or by one of its subsidiary organs of compliance with sanctions measures, in accordance with relevant Security Council resolutions, can contribute to the effectiveness of United Nations sanctions. States that may require assistance in the implementation and monitoring of sanctions may seek the assistance of the United Nations or relevant regional organizations and donors.**

**21. Donors, including States and international and regional organizations with the capacity to do so, should be encouraged to offer appropriate technical and financial assistance to States that need such assistance for the [more effective] implementation of sanctions.**

22. States should be encouraged to cooperate in exchanging information about the legislative, administrative and practical implementation of sanctions.

08-26906 (E) 070408